



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MODICA,

Plaintiff,

-against-

THE CITY OF NEW YORK, P.O. JAMES ROPENUS,
Shield No. 9379, and P.O.s JOHN AND JANE DOE #1-10

Defendants.

X **STIPULATION AND
ORDER OF
SETTLEMENT AND
DISCONTINUANCE**
05 CV 9860 (DAB)

WHEREAS, plaintiff commenced this action by filing a complaint on or about November 25, 2005, alleging that defendants violated his constitutional rights; and

WHEREAS, defendants have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

WHEREAS, plaintiff has authorized his counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed with prejudice, and without costs, expenses, or fees in excess of the amount specified in paragraph "2" below.
2. The City of New York hereby agrees to pay plaintiff the total sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) in full satisfaction of all claims, including claims for costs, expenses and attorney fees. In consideration for the payment of this

sum, plaintiff agrees to dismissal of all the claims against the City of New York and to release the individually named defendant New York City Police Officer James Ropenus and any present or former employees or agents of the City of New York, from any and all liability, claims, or rights of action that have or could have been alleged by plaintiff in this action arising from and contained in the complaint in this action, including claims for costs, expenses and attorney fees.

3. Plaintiff shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a general release based on the terms of paragraph "2" above and an Affidavit of No Liens.

4. Nothing contained herein shall be deemed to be an admission by the City of New York that it has in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. This Stipulation and Order contains all the terms and conditions agreed

upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York

July 16, 2007

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By:

Rose M. Weber
Rose M. Weber (RW 0515)

By:

David M. Pollack
David M. Pollack (DP 3873)
Assistant Corporation Counsel

SO ORDERED:

Deborah A. Batt
U.S.D.J.

7/18/07